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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2018 / 2019

UCV 4622 – CIVIL PROCEDURE II

(All Sections / Groups)

16 OCTOBER 2018

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have fifteen minutes during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining THREE HOURS in which to answer the questions.
2. This Question paper consists of 5 pages with 4 Questions only.
3. This Question paper consists two sections. **Question 1 in Section A is compulsory. Attempt three questions in Section B.** For Question no. 4, choose either to answer Question 4(a) or 4(b). The distribution of the marks for each questions is given.
4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of RULES OF COURT 2012 into the exam venue. “Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A – COMPULSORY**QUESTION 1**

(a) You are a well-known litigation lawyer. At the instructions of the plaintiff, you filed and served on the defendant a statement of claim which is reproduced below:

IN THE SESSIONS COURT AT MALACCA
SUIT NO 52-1234-2018

Between
 Tee Mei Hwa ... Plaintiff
 (NRIC No. 761018-53-4322)
 And
 Wong Soon En ... Defendant
 (NRIC No. 880223-35-4321)

STATEMENT OF CLAIM

1. On 1.12.2017 the plaintiff agreed to lend to the defendant the sum of RM250,000 only which the defendant agreed to repay by 1.3.2018 (“the said agreement”).
2. The said agreement is attached to the memorandum signed by the defendant dated 2.12.2017.
3. Pursuant to the said agreement, the defendant will obtain the sum of RM250,000 only from the plaintiff on 5.12.2017.
4. The defendant has repaid the plaintiff the total sum of RM100,000 on account of the said loan.

	Particular	
Date	Cheque No.	Amount
15.1.2018	MBB12345	RM50,000
17.2.2018	MBB12346	RM50,000

5. The defendant has not paid the balance of the said loan amounting to RM150,000 and the sum remains due and owing by the defendant to the plaintiff.

And the plaintiff claims:

- i. Payment of the said sum of RM150,000;
- ii. Costs;
- iii. Such other relief as the court deem fit.

Dated this 25 day of September 2018

(signed)

.....
Solicitors for the plaintiff

This Statement of Claim is filed by M/s Juria Afina & Partners of No. 5A, Jalan Melaka Raya 1, 75150 Melaka, solicitors for the plaintiff.

Continued...

A week after the statement of claim was served to the defendant, the plaintiff informed you that the memorandum signed by the defendant was dated 3rd December 2017. The plaintiff also instructed you that the defendant had made a third payment of Ringgit Malaysia Fifty Thousand (RM50,000) by way of MBB Cheque No. 12347 dated 19th February 2018 on account of the said loan. The plaintiff informed you further that there was a written notice of demand dated 15th July 2018 sent by the plaintiff to the defendant for repayment of the balance of the said loan amounting to Ringgit Malaysia One Hundred Thousand (RM100,000).

The plaintiff has instructed you to do all the necessary amendments to the statement of claim before defence is filed.

(i) Advise the plaintiff whether the proposed amendments are permitted.

(5 marks)

(ii) Reproduce the statement of claim as shown above and effect in writing the proposed amendments.

(15 marks)

(b) Generally, parties are bound by their pleadings. A party in a civil suit is entitled to whatever is stated in their pleadings. This position is reflected in *Chartered Bank v Yong Chan* [1974] MLJ 157. Examine whether the court will allow an objection as to the lack of jurisdiction to be raised at the trial of an action if it has not been pleaded.

(10 marks)

(c) O18 r19(1) of Rules of Court 2012 provides that the court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement on certain grounds. Examine this statement by referring to the provisions in the Rules of Court 2012 and decided cases.

(10 marks)

(Total: 40 marks)

Continued...

PART B**QUESTION 2**

(a) In the case of *Mareva Compania Naviera SA v International Bulk-carriers SA* (1975) 2 Llyod's Rep 509 an injunction was granted to restrain the defendant from improperly disposing of his assets, or concealing, or moving them abroad (ie out of jurisdiction of the English court) for the sole purpose of defeating an action brought against him. Examine the difference between *Mareva injunction* and *Anton Piller injunction* by referring to the provisions in the Rules of Court 2012 and decided cases.

(12 marks)

(b) Illustrate what matters are to be considered by the court in granting an interlocutory injunction. Your answer must be based on the provision in the Rules of Court 2012 and decided cases.

(8 marks)

(Total: 20 marks)

QUESTION 3

(a) P is suing Q in the High Court. After hearing P's witnesses, Q's counsel wishes to submit that there is no case to answer. What law and practice governs a submission of no case to answer in a civil suit? Would you advise Q's counsel to submit there is no case to answer?

(12 marks)

(b) When may a defendant obtain security for costs against a plaintiff? Discuss.

(8 marks)

(Total: 20 marks)

Continued...

Answer EITHER Question 4 (a) OR Question 4 (b)**QUESTION 4 (a)**

(i) On 29 January 2018, the plaintiff entered judgment in the Sessions Court against the defendant under Order 14 of the Rules of Court 2012 (ROC). The defendant intends to appeal against the judgment.

Advise the defendant on the following –

(a) the procedure for the appeal; and

(6 marks)

(b) whether the filing of a notice of appeal operates as a stay of execution of the judgment.

(9 marks)

(ii) Explain briefly the procedure for the application of a writ of seizure and sale in the High Court.

(5 marks)

(Total: 20 marks)

OR

QUESTION 4 (b)

(i) A sued B in the High Court. A's suit was dismissed with costs. A now wishes to appeal. Answer the following:

(a) Does A's appeal operate as stay of execution?

(4 marks)

(b) When is leave necessary for A's appeal?

(4 marks)

(c) May A raise new point or introduce fresh evidence in his appeal?

(4 marks)

Continued...

(ii) Messrs Chung & Co., a firm of solicitors has obtained a money judgment for RM1,500,000-00 only in the High Court in 2017 against Mr. Choo, an accountant who is employed by Syarikat Maju Bhd. Mr. Choo is paid a monthly salary of RM50,000-00 by the Syarikat Maju Sdn. Bhd.

Despite many demands by Messrs Chung & Co., Mr. Choo has not satisfied the judgement and Messrs Chung & Co. intend to proceed and enforce the relevant judgement.

Mr. Choo owns a Mazda motorcar, an expensive piano, a unit of double story house in Melaka, and 3,000 shares in Syarikat ABC Bhd.

Advise Messrs Chung & Co. on the steps they could take, with an outline of procedure, to enforce the judgement against Mr. Choo.

(8 marks)

(Total: 20 marks)

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